United Nations A/HRC/38/NGO/130

General Assembly

Distr.: General
13 June 2018

English only

Human Rights Council
Thirty-eighth session
18 June-6 July 2018
Agenda item 4
Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Indian Movement "Tupaj Amaru", International-Lawyers.Org, IUS PRIMI VIRI International Association, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-09687(E)

1809687

Please recycle

Death Penalty and Summary Executions in Iraq*

In Iraq, the number of executions continues to rise, even though article 15 of the Iraqi Constitution of 2005 should preserve and protect the right to life. Restrictions on the right to life are however, built into the legislation, justifying the extreme use of the death penalty and other human rights violations. Furthermore, there is a serious lack of fair trials in the country, making the death penalty even more frequently used.

This statement sheds light on the very grave issue of the scale of executions in Iraq.

Anti-Terrorism Law

The adoption of the Anti-Terrorism law No. 13 of 2005 gives Iraqi officials broad justifications for implementing the death penalty and resulted in the perpetration of numerous human rights violations, all under the pretext of combating terrorism. These human rights violations include arbitrary arrests, disproportional violence against peaceful protesters, lack of fair trials, the retrieval of confessions under torture and the political recourse to capital punishments.

The provisions of the law are restrictive, vague and susceptible to various interpretations. A person can be sentenced to death for 48 charges in the Anti-Terrorism law, all of which are worded in an extremely vague terminology. For instance, a person can be sentenced to death if he or she is threatening to increase fear among people. Provisions like these show that capital punishments became applicable on less-severe crimes where they were previously unwarranted.

Furthermore, measures imposed in light of the Anti-Terrorism law are often applied in a sectarian way, and are being used as a weapon against political opponents, journalists and intellectuals to repress public criticism. In addition, this same law provides secret informants with both amnesty and anonymity if they report alleged terrorist activities. This has given the Iraqi authorities the opportunity to fulfill sectarian motives, and rid themselves of opponents, by using this notorious law to arrest, detain and sentence hundreds of innocent civilians to death, on the basis of false and fabricated reports. The anti-terrorism legislation is often misused in cases unrelated to terrorism.

Lack of Fair Trials

Trials in Iraq are failing to respect international fair trial standards. The country has a weak judicial system, plagued by corruption, which frequently bases convictions on coerced confessions. This means that trial proceedings fail to meet international standards, allowing these executions to be based on discriminatory and sectarian motives – putting the lives of many innocent people under threat.

The Code of Criminal Procedure No.23 of 1971, however, states that the police is required to obtain a warrant to arrest a suspect and that the suspect must be brought before a judge within 24 hours of the arrest. The code also states that officials must ensure that defendants have access to a lawyer and have adequate time to prepare an effective defense and then challenge the evidence against them. Iraq has thus the necessary legal measures to ensure fairer trials. Unfortunately, when applying the death penalty, Iraq does not comply with the fair trial standards required by international human rights law.

The Iraqi system approves of torturing practices of detainees to force confessions, which judges rely upon to charge the accused. Judges often do not order any investigation into the torture allegations and do not question the defendant further about the matter. Judges also use evidence that is gained from secret informants to pursue criminal prosecutions. Resulting in situations in which Iraqis are being detained, convicted on inappropriate evidence, and sentenced to death shortly after being arrested.1 In its 2014 Universal Periodic Review (UPR), Iraq pleaded the death penalty – after the

1 OHCHR and UNAMI, Report on the judicial response to allegations of torture in Iraq, February 2015, Baghdad.

recommendation of many states to abolish the death penalty – because of the requirement due to which the President had to ratify executions. 2 In 2015 however, changes have been made in the Criminal Procedure to allow for the death penalty to be applied in a more speedily manner. This amendment no longer requires the president to ratify executions. This has created a weak judicial process, contrary to international law.

Situations during which people get only a few minutes to defend themselves against charges of being a terrorist are occurring constantly. It only takes 10 minutes to sentence someone to death by hanging. Lawyers are often only appointed to the defendants the day of the trail, ensuring there is not enough time to prepare a proper defense. Trials like this do not contribute to a just and peaceful society.

Most charges are made regarding violations of the Anti-Terrorism law No. 13, rather than specific offenses under the criminal code. The Anti-Terrorism law allows a very broad prosecution, all those affiliated with any terrorist activities – in any way, no matter how minimal – are in danger of being executed. People who were affiliated with a terrorist group, but only contributed to the protection of the human rights of civilians (such as providing health care) can be prosecuted and executed. The Anti-Terrorism law makes it easier to prosecute, but makes it more difficult to implement a strategy in prioritizing the worse abuses under iraqi and international law.

Executions

It becomes clear that when applying the death penalty, Iraq does not comply with fair trial standards required by international human rights law. The death penalty and extrajudicial executions in Iraq are used as tools of political repression, to eliminate political opponents, and to maintain a reign of terror over the Iraqi population as a whole. These arbitrary and widespread state executions constitute an integral part of the systematic repression experienced and feared in Iraq, which the government has used to sustain its rule. This repression is further characterized by arbitrary arrests, large-scale "disappearances", indefinite detention without trial, and custodial deaths caused by torture. Further to this, when Iraqi citizens are executed by the state, the Justice Ministry releases little or no evidence as to their names, their convictions, any information about what they were convicted of, or whether they had a trial at all.

Besides the state executions, many of the Iraqi executions are not publicly known. The number of executions in Iraq is expected to be much higher than the official numbers. Iraqi militias and security forces often arrest and detain individuals without giving them or their families any information about the arrests, where the detainee is being held, or on their physical or mental condition. Instead, they deny the person has ever been arrested. These detainees are kept in secret prisons and are often people who are not terrorists, but abducted on a purely sectarian basis. Over the past 15 years lists have been made public by NGOs of people that are missing, and believed to have been executed. These lists clearly show how militias have specifically targeted certain families on purely sectarian grounds. As their arrest and detention is not publicly known, those who are arbitrarily detained are highly vulnerable to abuse by the security forces, who deny them any right to justice or accountability. Most often, these detainees are executed in secret, and their bodies are found days, weeks, or even months later, with signs of obvious torture and execution. This practice of 'secret execution' vastly increases the number of deaths caused by capital punishment and demonstrates the abuse of the death penalty.

In 2014, during the Universal Periodic Review, Iraq defended the use of the death penalty and the necessity with the argument that the country was confronted with organized and terrorist crimes, and violent acts perpetrated on racial, ethnic or religious grounds. Even though there is no reason to justify the death penalty, this reasoning is contradictory because this government approves of abductions and executions on a sectarian basis.3

2 United Nations, Human rights Council – Working Group on the Universal Periodic Review, Iraq, A/HRC/WG.6/IRQ/1.

3 United Nations, Human rights Council – Working Group on the Universal Periodic Review, Iraq, A/HRC/WG.6/IRQ/1.

Recommendations

We, NGOs, Signatories to this statement recommend that the Human Rights Council:

- Call on the Iraqi government to take all measures to amend the flawed justice system by ending arbitrary arrests, detention, unfair trials and the extrajudicial imposition of the death sentence;
- Conduct a thorough, independent, impartial, and timely investigation into the Anti-Terrorism Law N0. 13 of 2005, and whether it contravenes international legal standards;
- Appoint a UN Special Rapporteur for the human rights situation in Iraq;
- Pressure the Iraqi government to abolish the death penalty in line with the recommendations made during the 2014 UPR.

---

*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussells Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), Women Will Association (WWA), The Iraqi Centre for Human Rights, The International League of Iraqi Academics (ILIA), Women Solidarity for an Independent and Unified Iraq, Organization for Widows and Orphans (OWO), International Anti-Occupation Network (IAON), Kuala Lumpur Foundation to Criminalise War, Spanish Campaign against the Occupation and for Iraq Sovereignty- CEOSI, Arab Cause Solidarity Committee, Iraq Solidarity Association in Stockholm, NGOs without consultative status, also share the views expressed in this statement.